

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.138 OF 2001

Narayan Ganpat Jadhav
c/o.Yerawada Central Prison
Pune - 411006

... Appellant

V/s.

The State of Maharashtra

... Respondent

Mr.S.B. Shetye, Advocate appointed for Appellant

Mrs.P.H. Kantharia, APP, for Respondent

CORAM: **V.G. PALSHIKAR &
SMT.NISHITA MHATRE, JJ.**

DATED: **APRIL 5, 2005**

ORAL JUDGMENT (PER MHATRE, J.):

. The Present Appeal is directed against the judgment and order of the Sessions Court convicting the appellant under section 302 of the Indian Penal Code and sentencing him for life imprisonment and fine of Rs.500/-.

2. We have with the assistance of the learned Advocate for the Appellant and the Additional Public Prosecutor scrutinised the entire evidence on record before the Sessions court and find that the prosecution has built its case on the following facts. The victim was the wife of the appellant. She died of burn injuries on 14.3.1996. The neighbours heard her

screaming to be saved. Therefore, they rushed to her rescue. PW2 who is one of her neighbours wrapped the victim in a blanket. She was removed to the Civil hospital at Phalton. She was then shifted to the Civil hospital at Satara. PW10, the mother, after hearing of the incident, rushed to the hospital at Phalton. PW10, accompanied the victim to the civil hospital, Satara. Three dying declarations were recorded; one at 9.10am and the other two which are at Exhibit 43 and 34 respectively were recorded at about 12 noon, at an interval of 10 minutes. The victim succumbed to the injuries at around 11 pm on 16.3.1996 in the Civil Hospital, Satara.

3. The victim mentioned in the earliest recorded dying declaration that her husband has set her ablaze due to which she suffered the burn injuries. The Appellant was, therefore, charged under section 302 and tried accordingly. The Sessions Court convicted him of the offence and sentenced the accused to life imprisonment. Being aggrieved by this judgment, the present appeal has been preferred by the appellant.

4. The prosecution has examined 17 witnesses to establish the offence committed by the appellant. PW1 is the Panch witness in the spot Panchnama. PW2 to 8 are persons who lived in the neighbouring houses and who

saw the victim was burnt. PW9 is the son-in-law of the victim who saw the victim in the Civil Hospital after the incident. None of them have implicated the appellant or have stated that they were informed by the victim that she had suffered burns on account of the appellant setting her ablaze. PW2 to 9 have all been declared hostile. PW10 is the mother of the victim. She has stated that she went to the Civil Hospital, Phalton alongwith her brother in law, immediately after she heard of her daughter being burnt. She has deposed that she arrived at the Civil Hospital between 7 am and 8 am. She has stated that the victim told her that the appellant had poured kerosene on her and had set her afire. PW10 has also deposed that the victim was subjected to ill-treatment by the appellant and that the victim had told her that this ill-treatment was because the appellant had a mistress named Sitabai. She has further stated that her daughter spoke of the appellant's addiction to liquor and that the victim had informed her that the burn injuries were caused by the Appellant because of these reasons. PW10 has admitted that the relations between her and the appellant were not cordial and they were not on visiting terms with each other. PW11 is the brother of the victim. He visited the victim at the Civil hospital, Satara at about 3.45pm. He has also stated that the victim told him that she suffered from the burn injuries because her

husband had set her on fire after pouring kerosene on her because of his addiction to liquor and extra-marital relations.

5. PW12 is the Nayab Tehsildar who recorded the dying declaration which is at Exhibit 34 at 12.10 pm on 14.3.1996. The Medical Officer who was attached to the Civil hospital, Satara has been examined as PW13. He has stated that he endorsed the dying declaration at Exhibit 34 as well as the one at Exhibit 37 recorded by the police constable. He has further deposed that when the dying declarations were recorded, the victim was conscious and able to make a statement. PW13 has also conducted the post-mortem and has opined that the probable cause of death was due to septicemia, shock due to 95% burn injuries. PW14 is the police constable, who was present at the civil hospital, Satara and who recorded the dying declaration at Exhibit 43. PW15 is the PHC who has recorded the declaration made by the victim at Exhibit 45 at around 9.10 in the morning. The offence was registered later at about 20 minutes past noon. This dying declaration has been recorded by him in the Government hospital at Phalton. PW16 is the Investigating Officer and PW17 is the Medical Officer, who was attached to the Phalton Rural Hospital and was on duty on 14.3.1996 when the victim was brought to the hospital at about 7.45 am. He has stated that he has

endorsed the declaration of the victim as recorded by PW15 and that the statement was recorded when the patient was conscious and well oriented.

6. The appellant has also examined one Raosaheb Mulik, whose daughter was the daughter-in-law of the appellant. He has stated that the relations between the victim and the appellant were normal and he was not aware whether the appellant was addicted to liquor. The appellant has also examined his son. However, he has stated that he was not present at the time of the incident and was informed telephonically about the incident. He has further stated that his mother was unable to speak in the hospital at Satara. He has also denied that his father, the appellant, had any vices and that his parents had quarrelled. He has denied the extra-marital relations of his father.

7. The picture that emerges on a reappraisal of the evidence is that on the one hand there are three dying declarations, seemingly corroborated by PW10 and PW11; on the other the depositions of PW2 to PW9 who have categorically denied that the victim informed them that the appellant was responsible for the burn injuries suffered by her. The first dying declaration was recorded at Phalton. In this declaration the victim has stated that the appellant, in an inebriated state,

poured kerosene over her and set her afire and after which he ran away from the spot. She has further declared that she shouted for help. People gathered around her trying to extinguish the fire. She has further stated that DW1, who is the father in law of her son, took her to the Phalton hospital in his jeep and admitted her there.

8. The other two declarations which were made around 12 noon are an improvement on the earlier declaration. The second declaration which is at Exhibit 43 and recorded by PW12 mentions in graphic details the reasons for which the victim was set ablaze by the appellant. The reasons include that he was addicted to liquor, that the relations between the husband and wife were not good because of his illicit relations with one Sitabai. The second declaration also mentions that the appellant had beaten the victim in the presence of Sitabai. Exhibit 34 which was recorded 10 minutes thereafter by the Nayab Tehsildar indicates that she was set ablaze by her husband at 6 O'clock in the morning and that the neighbours tried to extinguish the fire. She has also stated in that declaration that the appellant acted in this manner because he was addicted to vices and was involved with a woman. A bare perusal of the three declarations indicates that each one is different in material particulars and is an improvement

of the earlier one. The first declaration which was recorded in Phalton does not mention anything about the extra marital relations of the appellant and instead the victim has stated that at 6 O'clock in the morning, the appellant in an intoxicated state, had set her ablaze. The victim was taken to the Satara hospital in an ambulance accompanied by her mother. The two declarations which were recorded in the Satara hospital are an improvement over the earlier one recorded at Phalton. This is probably because during the journey from Phalton to Satara, PW10 had tutored the victim. Therefore it is difficult for us to accept any of these declarations. Moreover it is unbelievable that the appellant would be intoxicated at 6.00 a.m. when he is alleged to have set the victim ablaze.

9. Eight witnesses examined by the prosecution had turned hostile on the point as to whether the victim informed them about the reasons for her burns. All of them were neighbours of the appellant and are independent witnesses, PW2 and PW3, had seen the victim ablaze. PW4 to PW8 saw her immediately after she sustained the burn injuries. These witnesses, i.e., PW2 to PW8 have stated that the victim had lost consciousness and, therefore, had not informed them of the reasons for her burns. PW9, the son in law who saw the victim at the Civil Hospital, Phalton has also not

supported the prosecution case.

10. Taking into consideration the fact that the son of the victim DW2 and the son in law of the victim PW9, had deposed that the relations of PW10 and PW11 with the appellant were strained and that they were not on visiting terms at all, the possibility of the PW10 tutoring the victim cannot be ruled out. In such circumstances, in our opinion, it would be difficult to convict the accused as the prosecution case against the accused has not been established beyond reasonable doubt. The accused has also suffered burn injuries on his face and hands as deposed by PW4, 5, 6 and 7. Contrary to the statements of the victim these witnesses have deposed that the appellant had not fled from the scene after the victim sustained the burns.

11. In these circumstances, we are of the view that the judgment of the Sessions Court will have to be set aside and the appellant must be set at liberty. Appeal is, thus, allowed. The Appellant be released forthwith, if not required otherwise in law.

12. The accused was represented before us by an Advocate appointed. The Advocate has taken adequate efforts to put the entire case of the accused before us. We, therefore, quantify the fees payable to the Advocate

appointed for the appellant at Rs.1,000/-.